

**LEASE \$MART
TERMS AND CONDITIONS -- VERSION 1.1
DATED JUNE 1, 1999**

NOTE: *The premise behind the following terms and conditions is very close to that of a GS \$Mart deal -- the customer will procure the desired equipment through their normal procurement methods (i.e., CMAS, Master, competitive bid) and will reference a standard paragraph stating that the State reserves the right to either pay for the equipment outright, or to select a financing alternative via the State's financial marketplace (Lease \$Mart/GS \$Mart). To summarize, leasing companies will supply the financing and will not be responsible for standard operational requirements such as equipment performance and maintenance issues.*

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1. PURPOSE/DEFINITIONS

The purpose of these Terms and Conditions is to prescribe the leasing provisions, covenants, and payments to be made by the State of California (henceforth referred to as "State"), its designated officials and agency representatives who have contracting authority for specific "Asset(s)". These Asset(s) may include, but are not limited to, equipment (listed and maintained by serial number, where applicable, and location), and all related services, software and applicable one-time charges such as delivery, transportation, and shipping and handling, all of which are collectively referred to as "Leased Asset(s)." "Lease" refers to the entire Lease agreement issued by the State to the Lessor for the Leased Asset(s) and includes these Terms and Conditions, whether incorporated by reference or in full, the Lease Payment Schedule, and the applicable Participation Agreement. "Lessor", as used in this Lease, refers to the Lessor of the Asset(s) and its representatives/subcontractors. "Supplier" refers to the entity providing the Leased Asset(s) covered by this Lease. The Supplier is wholly responsible for all terms and conditions of, and/or general provisions found in, the Supplier agreement with the State.

The State will solicit Lease quotes via a standard "Request for Lease Quote" (RFLQ) form to be provided by the State; all responses must

adhere to the RFLQ form. The awarded Lessor's response will be attached to the Purchase Order along with the Lease Payment Schedule and a Casualty Value table (listed in percentages); serial numbers may be added to the Purchase Order upon receiving this information from the Supplier. Thus, for the purpose of these Terms and Conditions, all references to "Lease Payment Schedule" and "Leased Asset(s)" will encompass the entire RFLQ response from the Lessor.

Each Lease Payment Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code, and the awarded Lessor understands that it will be responsible for acquiring the Leased Asset(s) as per the RFLQ.

2. INITIAL TERM

The Lease shall be effective when all documents are completed in a timely manner; if any documents require more than one signature, the order of signature will be: 1) Lessor, and; 2) the State. The Initial Term of the Lease commences on the Assumed Acceptance date for all Leased Asset(s) on the Lease Payment Schedule (all payments in arrears) and shall continue for a period ending that number of months from the Assumed Acceptance Date as set forth in the Lease Payment Schedule. All extensions and/or renewals shall be subsequent to the original Initial Term.

3. ASSUMED ACCEPTANCE

The State will accept the Leased Asset(s) by signing the Participation Agreement that identifies the Assumed Acceptance date. The Assumed Acceptance date is the 10th state working day after the date of delivery of the Leased Asset(s). The State agrees to require the Supplier in the Purchase Order to provide Lessor with the delivery date. Should this date fall on the first day of the calendar month, the Leased Asset(s) will be added to the Lease Payment Schedule and accounted/paid for accordingly. Should this date not fall on the first day of the calendar month and/or when the Initial Term does not expire on the last day of a calendar month, it is the State's discretion, as noted in the RFLQ, to adjust the applicable Lease Payment

Schedule to: 1) prorate the Leased Asset(s) on the basis of a 30-day month, or; 2) allow interim rent with the Leased Asset(s) rolling up into the Lease Payment Schedule on the first day of the next calendar month. The State shall issue prior to the Assumed Acceptance Date a written notice of non-acceptance to the Supplier and Lessor for those Leased Asset(s) received which are considered by the State as incorrect items or damaged while in transit.

4. INSTALLATION OF LEASED ASSET(S)

The State is responsible for installation of the Leased Asset(s) and shall pay for any delivery and installation charges not listed in the Purchase Order with the Supplier.

5. LEASE PAYMENT

During the Initial Term, Lessor shall invoice the State no later than sixty (60) days in advance to allow for billing cycle time, and the State shall pay a Lease payment for each aggregated payment period as specified in the Lease Payment Schedule. The State's obligation to pay shall begin upon the Assumed Acceptance Date and falls under the legislative mandate of the California Prompt Payment Act (Chapter 916, Statutes of 1998).

The State acknowledges and agrees, except as expressly provided in Sections 14, 22, 34, and 35 that its obligation to pay per the Lease Payment Schedule and the rights of Lessor and Lessor's assigns shall not be subject to any abatement, reduction set-off, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims the State may have against Lessor, Lessor's assigns, the manufacturer, Supplier, or maintainer of the Leased Asset(s), or any person for any reason whatsoever.

6. TITLE

The Leased Asset(s) under these Terms and Conditions shall, at all times, be the sole and exclusive property of the Lessor. The State shall have no right or property interest therein, except for the right to use the Leased Asset(s) in the normal operation of its business at the installation location, or as otherwise provided herein. All Leased

Asset(s) shall remain personal property even if installed in, or attached to, real property. Lessor will be permitted by the State to display notice of its ownership on the Leased Asset(s) by way of a suitable stencil, label or small plaque affixed to the Leased Asset(s).

7. SOFTWARE

Title to all licensed software programs that the State acquires, leases and/or finances with the Lessor under this lease remain the property of the software manufacturer. Use of licensed programs is governed by the licensing agreement between the software manufacturer and the State.

8. WAIVERS

The State will not create, assume or voluntarily suffer to exist, any mortgage, pledge, encumbrance, security interest, lien or charge of any kind upon any Leased Asset(s) let in the Lease.

9. WARRANTIES

If the State opts to enter into extended warranties, and if the State is not in default under these terms and conditions, the Lessor passes through to the State at any time during the Lease and/or when the State exercises its purchase option, all applicable and/or extended warranties made available by the Supplier and manufacturer for any Leased Asset(s) let to the State, but only to the extent any such warranties are assignable or transferable.

Lessor warrants and represents that neither Lessor, nor anyone acting or claiming through the Lessor by assignment or otherwise, will interfere with the State's quiet enjoyment of the Leased Asset(s) so long as no event of default by the State shall have occurred and be continuing. Lessor may, at any and all reasonable times during normal state-working hours, enter Lessee's premises for the purposes of inspecting the Leased Asset(s) and the manner in which it is being used. It is understood by the Lessor that some State offices may require security checks (i.e., notification to expecting party, badge distribution, photo and finger printing) prior to authorization to enter premises and may be denied entrance if a justified security

issue is determined by the State and/or its designated security representative.

Except as expressly provided above, Lessor makes no warranty, expressed or implied, as to any matter whatsoever, including but not limited to, the implied warranties of merchantability or fitness for a particular purpose. If the Leased Asset(s) are not properly installed, do not operate as represented or warranted by the Supplier, or are unsatisfactory for any reason whatsoever, the State shall make all claims pertaining thereto solely against the Supplier and shall, nevertheless, pay the Lessor all Lease payments under this Lease.

10. MAINTENANCE

If an extended warranty has not been entered into, the State shall maintain the Leased Asset(s) in good working order, condition and repair, and, in some cases (i.e., mainframe processor) the Leased Asset(s) will be deemed "certifiable" by the manufacturer when returned to the Lessor by way of a certificate supplied and paid for by the State. If an extended warranty is applicable for the Leased Asset(s), then no manufacturer's certificate is required.

All consumables required for the daily operation of the Leased Asset(s) (i.e., printer toner refills, computer diskettes, vehicle gasoline) shall be furnished and paid for by the State via a separate purchase order or contract and not attached to the Lease.

11. DOCUMENTATION

Because the Lessor holds title to the Leased Asset(s), additional documentation, which is necessary for the State in its use of the Leased Asset(s) (i.e., manuals/printed materials for hardware/software, including updated versions thereof) may be difficult for the State to obtain directly from the Supplier. If this is the case, the State may ask the Lessor to obtain the required material on their behalf, and if there is a cost involved, the State shall elect to either pay for the material via a separate procurement method or include in the Lease.

12. FINANCING ASSIGNMENT

For the purposes of this section, two different types of Financing Assignments exist and are as follows:

- A. Original Lessor continues to receive payment: The State and Lessor mutually acknowledge that no prior approval is required for the Lessor to enter into a Paying Trust or similar document whereby the Lessor remains the Paying Agent or Trustee under this Lease. For the State's internal purposes only, the Lessor agrees it will inform the contracting State agency and the Department of General Services' Lease \$Mart Administrator of this type of assignment in writing. No countersignature to this written notice is required by the State.
- B. Existing Lessor no longer receives payment: The existing Lessor must immediately notify the State in writing of a pending financing assignment of this Lease to a subsequent Assignee, Paying Agent or Trustee. The Lessor understands this assignment request is subject to the approval and acknowledgement of the State and that both shall not be unreasonably withheld. If the pending financing assignment is approved by the State, the existing Lessor and the new Assignee, Paying Agent or Trustee understands that an executed amendment to the Lease must first be issued by the State and the new Assignee, Paying Agent or Trustee must adhere to the requirements outlined in Section 22 before payment will be rendered by the State. Also, the new Assignee, Paying Agent or Trustee understands and accepts all language found in the Terms and Conditions, original Lessor's RFLQ, original purchase order and all amendments, and any other specific language accepted by the original Lessor, and/or subsequent Lessor(s), for this Lease.

13. ALTERATIONS AND ATTACHMENTS

Upon prior written notice to Lessor, the State may, at its own expense, make minor alterations in, or add attachments to, the Leased Asset(s), provided such alterations and/or attachments shall not interfere with the normal operation of the Leased Asset(s) and do

not otherwise involve the pledge, assignment, exchange, trade or substitution of the Leased Asset(s) or any component or part thereof. If the alteration and/or attachment reduces the value of the Leased Asset(s) or interferes with the normal and satisfactory operation or maintenance of any of the Leased Asset(s), or creates a safety hazard, the State shall promptly remove the alteration and/or attachment at the State's expense and restore the Leased Asset(s) to the condition the Leased Asset(s) was in just prior to the alteration and/or attachment.

Before returning the Leased Asset(s) to Lessor, the State may remove any alteration and/or attachment not owned by Lessor. If removed, State agrees to, at its expense, restore the Leased Asset(s) to its original condition, normal wear and tear excepted. If Lessor had previously consented to the disposition or removal of the alteration and/or attachment, the restoration must be with parts Lessor owns or supplies, or those supplied by a source approved by Lessor. If not removed, such alterations and/or attachments shall become the property of Lessor, without charge, free of any liens or encumbrances.

Changes or additions made to items of Leased Asset(s) in connection with maintenance or warranty services, including engineering changes utilizing manufacturer's genuine parts, are exempt from the terms of this section, and any parts installed in connection with such services shall become the property of Lessor.

At State's request, Lessor will have the option to lease or finance new alterations and/or attachments to the Leased Asset(s) at then current or negotiated rates and must be coterminous with the underlying Leased Asset(s).

14. APPROPRIATION OF FUNDS

This Lease was issued by the State under and pursuant to the laws of the State of California to fund the leasing of the Asset(s) described herein. If, after the first fiscal year (July 1 through June 30) in which Asset(s) are leased, funds are not appropriated or otherwise made available to continue paying for the Asset(s) in a subsequent fiscal year, then the State may terminate this Lease, in whole but not in

part, as of the last day for which funds were appropriated or otherwise made available, but shall be obligated to pay all charges incurred through the end of that fiscal year. The State incurs no obligation under this Lease for any period of time for which funds are not appropriated.

It is reasonably expected that Lease payments under this Lease will be paid from annual appropriations of the State. The remaining general funds of the State are not reasonably expected to be used to make such payment and no other moneys are pledged to the Lease or reasonably expected to be used to pay Lease payments on the Lease.

In the event of non-appropriation, the State will promptly and verbally notify the Lessor of non-appropriation, and if requested by the Lessor at that time, will provide written notification that no funds have been appropriated or otherwise made available for payments due under this Lease or for the acquisition of substantially similar Leased Asset(s) to replace those provided under this Lease, to the extent permitted by law.

15. BEST EFFORTS FOR FUNDING AND REPLACEMENT UPON TERMINATION DUE TO NON-APPROPRIATION

The State will use its best efforts to obtain funding for the Asset(s) leased hereunder. If the State exercises its right to terminate a Lease for non-appropriation, the State agrees not to acquire or lease substantially similar Asset(s) to replace those provided for one year from the date of termination, to the extent permitted by law.

16. TERMINATION FOR CONVENIENCE

Notwithstanding any other provision of these Terms and Conditions and the Lease, there shall be no termination for convenience of the payments due pursuant to the Lease payment schedule until such time the full amount due is paid.

17. END-OF-LEASE NOTICE

The Lessor will issue a written end-of-lease notice(s), to the State for each Lease in place. The notice(s) will be sent to the State 120 days prior to the lease expiration and 90 days prior to the lease expiration. The State understands that upon receipt of either of these notices, it must decide to either: 1) renew the Leased Asset(s); 2) purchase the Leased Asset(s), or; 3) return the Leased Asset(s) (see Sections 18-20), AND must respond to the Lessor no less than forty-five (45) days prior to the expiration of the Lease term with their intent. Failure to do so will result in the Lessor either billing the State for the Fair Market Value of the Leased Assets (Section 19) or repossessing the Leased Asset(s) and charging the State for all reasonable costs to do so (Section 20).

18. RENEWAL

The State may upon no less than forty-five (45) days prior written notice to Lessor renew the Lease with respect to any Leased Asset(s), at the expiration of the Initial Term, provided the State is not in default. The State may renew the lease with respect to a Leased Asset(s) with a fair market value purchase option one or more times, and the Lessor may offer differing renewal terms of month-to-month, one (1) year, or any fraction thereof as requested by the State, up to a cap of five (5) years total, not extending beyond five (5) years from the original Assumed Acceptance Date of the Leased Asset(s) (i.e., a 36-month lease could not be renewed for another 36-months because the total would equal six years and would exceed the cap of five years total). In certain circumstances, the State may negotiate the renewal cap with the Lessor if the Leased Asset(s) have a longer essential use life than five (5) years (i.e., portable building, yellow iron). The renewal lease rate shall not be at a cost higher than the existing Lease, with lower payments on a long-term (year or more) renewal. For Leased Asset(s) with a fair market value end-of-lease renewal option, the renewal Lease payment shall be the projected fair market rental value of the Leased Asset(s) as of the commencement of such renewal term.

19. PURCHASE OF LEASED ASSET(S)

- A. The State may upon no less than forty-five (45) days prior written notice to Lessor purchase any Leased Asset(s), by

individual purchase order line item, upon expiration of the Lease, provided the State is not then in default. For Leased Asset(s) purchase order line items with a fair market value end-of-lease purchase option, the purchase price shall be the projected fair market sales value of the Leased Asset(s) as of such expiration date. For Leased Asset(s) purchase order line items with a pre stated purchase option, the purchase price shall be specified in the Lease Payment Schedule.

- B. During the Lease, the Lessor may credit the State with a portion of the Lease payments as Purchase Option Credits to be applied against the purchase price if the State decides to purchase the Leased Asset(s). The accumulation of such credits, if applicable, shall be in accordance with computations specified in the Lease Payment Schedule.
- C. If the State purchases any Leased Asset(s), the State shall, on or before the date of purchase, pay: 1) all Lease payments due through the day preceding the date of purchase; 2) any applicable sales or use taxes, and; 3) the purchase price. The Lessor shall, on the date of purchase, transfer to the State by bill of sale provided upon State's request, without recourse or warranty of any kind, express or implied, all of the Lessor's right, title and interest in and to such Leased Asset(s) and all warranties and extended warranties and in their then condition and location, on an "as is, where is" basis. Should the Lessor file a UCC form against the Leased Asset(s), written notice of this action must be immediately sent to the Lease Administrator. The Lessor shall warrant title free and clear of all liens and encumbrances created by or through the Lessor, including the removal of all applicable UCC filings and supplying such evidence in regards to said removal to the Lease Administrator, for all Leased Asset(s) purchased by the State.

20. RETURN OF LEASED ASSET(S)

The State will return the Leased Asset(s) to Lessor upon non-appropriation, expiration or termination of the Lease. Upon return, the Leased Asset(s) must be in good condition and working order, normal

wear and tear excepted, and qualified for the manufacturer's maintenance service, if available. The State will return the Leased Asset(s) to the location specified by the Lessor within the contiguous United States per a mutually agreed upon "Return Date" in event of termination, or the Return Date specified in the Lease Payment Schedule in event of expiration. In the event of non-appropriation, in which no budget for the specific Lease has been approved by the State for the following fiscal year, the State will continue with the Lease payments through the end of the State's fiscal year (July 1 through June 30) and return the Leased Asset(s) within ten (10) state-working days of June 30, the last day of the fiscal year. Upon return of the Leased Asset(s), the State agrees not to acquire or lease substantially similar Asset(s) to replace those provided for one year to the extent permitted by law. If the Leased Asset(s) being returned do not arrive at the location specified by the Lessor within ten (10) state-working days of the Return Date, then the Leased Asset(s) will be prorated by purchase order line item on a day-to-day basis against the Lease Payment Schedule for the delinquent Leased Asset(s) up to the date of arrival and charged to the State accordingly.

At the State's discretion and as described in the RFLQ, the return of Leased Asset(s) will be the responsibility of the State, or the State may direct this responsibility to the Lessor, who will, in turn, bill the State for this service at the end of the Lease term per Section 20, Paragraph 4.

Should the State elect to return the Leased Asset(s), it will be responsible for: 1) the labor and costs associated with the deinstallation, packing in appropriate shipping containers, and shipping of the Leased Asset(s) to the specified location; 2) any cost to qualify the Leased Asset(s) for the manufacturer's maintenance service, or, if not available, and the subsequent cost to return the Leased Asset(s) to good working condition, and; 3) all risks of loss or damage to the Leased Asset(s) during periods of returning transportation and shipping to the specified location. Once the Leased Asset(s) are delivered to the Lessor, the risk of Loss will be assumed by the Lessor and shall constitute a full release by the State of any rights or possessory interest in the Leased Asset(s). Should the Lessor be directed the responsibility as per the RFLQ, the Lessor

will either bear all responsibility for Items 1-3 listed above, or any or all portions of Items 1-3, as requested in the RFLQ. The State reserves the right to negotiate costs/services of this Section with the Lessor near the end of the Lease term as unforeseen circumstances could prevail at that time (i.e., the State chooses to purchase or renew the Lease or certain Leased Asset(s) line items, or the State elects to return the Leased Asset(s) themselves). The costs to provide this service shall be reasonable and the Lessor must list, and attach, copies of all itemized receipts from subcontractors (if applicable) to receive payment from the State. The Lessor understands that it will act as Paying Agent to its subcontractors and that it represents the subcontractors in reference to all Terms and Conditions of this program (if applicable). The State may elect to pay for this service via a separate procurement method or include the cost in the Lease. The Lessor also understands that it will be responsible for all risk of loss or damage to the Leased Asset(s) if directed this responsibility.

Should the Lessor be forced to repossess the Leased Asset(s) per Section 17, the Lessor will charge the State for all reasonable and necessary costs to do so. Again, the Lessor must list, and attach, copies of all itemized receipts from subcontractors (if applicable) to receive payment from the State. The Lessor understands that it will act as Paying Agent to its subcontractors and that it represents the subcontractors in reference to all Terms and Conditions of this program (if applicable). The State may elect to pay for this service via a separate procurement method (i.e., Standard Agreement) or include the cost in the Lease.

21. RELOCATION

The Leased Asset(s) specified under the Lease Payment Schedule shall not be moved from one State installation location to another State location unless the Lessor has received written notification from the State specifying the new location of the Leased Asset(s) per individual serial numbers. The State shall arrange and pay for all transportation, rigging and drayage charges for such relocation and bear all risks associated with the relocation. Rearrangement of Leased Asset(s) on the same site for the State's convenience shall be at State's expense and no notification to the Lessor is warranted.

The State understands that no relocation of Leased Asset(s) shall relieve any and all obligations under the Lease Payment Schedule.

22. ADDITIONAL REQUIREMENTS

It is the Lessor's understanding that individual State agencies may require additional-executed forms by the Lessor before conducting business with the Lessor. Some of these requirements may include:

Drug Free Workplace Certification: The Lessor hereby certifies under penalty of perjury under the laws of the State of California to comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- B. Establish a Drug-Free Awareness Program as required by Government Code Section 8355 (b) to inform employees about all of the following:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- C. Provide, as required by Government Code Section 8355(c), that every employee who works on the Lease:
 - 1) will receive a copy of the company's drug-free policy statement; and,
 - 2) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the Lease Payment Schedule, termination of the Lease, or both, and the Lessor may be ineligible for award of any future state contracts if the State determines that any of the following has occurred: 1) the Lessor has made false certification, or; 2) violates the certification by failing to carry out the requirements as noted above.

Statement of Compliance: The Lessor agrees that under the penalty of perjury under the laws of the State of California that the Lessor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 (a-f) and Title 2, California Code of Regulations, Section 8103.

Nondiscrimination Clause: During the performance of these Terms and Conditions and/or Lease, Lessor shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. Lessor shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Lessor shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into these Terms and Conditions and/or Lease by reference and made a part hereof as if set forth in full. Lessor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Lessor shall include the nondiscrimination and compliance provisions of this clause in all sub-contracts resultant to these Terms and Conditions and/or Lease.

Vendor Data Record: For the purposes of payment to the Lessor by the State Controller's Office, it is necessary that the Lessor complete a Vendor Data Record for each individual State agency that it enters into a Lease with. The Lessor must complete the form in its entirety, including listing its Tax ID number, and submit it to the State agency prior to any payment being received.

Child Support Compliance Act Statement: For any Lease in excess of \$100,000, the Lessor acknowledges in accordance therewith, that:

- A. The Lessor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- B. The Lessor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all employees to the New Employee Registry maintained by the California Employment Development Department.

23. CONFIDENTIALITY STATEMENT

All financial, statistical, personal, technical, and other data and information relating to the State's operations which are designated confidential by the State and made available to the Lessor in order to carry out this agreement, or which becomes available to the Lessor in carrying out this agreement, shall be protected by the Lessor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure will be provided by the State in writing to the Lessor. The Lessor's methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Lessor shall not be required under the provisions of this paragraph to keep confidential

any data or information which is or becomes publicly available, is already rightfully in the Lessor's possession, is independently developed by the Lessor outside the scope of this agreement, or is rightfully obtained from third parties.

24. OPINION OF COUNSEL

Upon Lessor's request, the State agrees to provide Lessor an "Opinion of Counsel" certifying the following:

- A. The Lease has been duly authorized, executed and delivered by the State acting through its duly qualified elected or appointed officers or agents in accordance with its terms and conditions, and;
- B. The Lease is a legal, valid and binding obligation of the State.

25. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of California.

26. TAXES

The Lessor shall declare and pay all property taxes associated with the Leased Asset(s) acquired under the Lease when due. The Lessor may contest tax assessments with the appropriate jurisdictions as long as such proceedings do not risk the forfeiture or confiscation of the Leased Asset(s), or any interest therein. Failure to pay taxes when due will constitute a default under the Lease. State and local use taxes will be billed by the Lessor to the State as an additional charge on the monthly invoice.

27. RISK OF LOSS

The State will bear the responsibility for any loss of the Leased Asset(s) if such loss does occur during the term of the Lease and while in the State's possession.

28. GENERAL LIABILITY

Lessor shall maintain general liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, representatives and independent contractors, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Lessor's limit of liability. The policy must include the name of the individual state agency issuing the Lease, the State of California, its officers, agents, employees and servants as additional insured, but only insofar as the operations of the Leased Asset(s) under the Lease are concerned.

Unless specifically provided otherwise in these Terms and Conditions or a Lease hereunder, all claims, costs and expenses of any description arising out of these Terms and Conditions shall be for the sole account of the State, except that the Lessor shall bear responsibility, to the extent of its fault, for any claims, third party or otherwise, for personal injury or real and tangible personal property damage caused by the Lessor's negligence.

29. WORKERS' COMPENSATION

Lessor shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Lessor's liability limits of \$1,000,000 shall be required.

30. AUTOMOBILE LIABILITY (if applicable)

If the Lessor will be utilizing a vehicle(s) during the term of this Lease (i.e., de-install and return of the Leased Asset(s), Section 20), the Lessor shall maintain motor vehicle liability insurance with limits of

not less than \$1,000,000. per accident. Such insurance shall cover liability arising out of a motor vehicle including personally owned, hired, and non-owned motor vehicles.

31. STATE'S COVENANTS

Any one or more of the following are events of default:

- A. The State shall fail to pay, in full, any sum payable by the State when due hereunder following Lessor's written notice of such failure, to the State Agency and the Department of General Services, except as provided in Sections 14 and 33.
- B. The State, for more than fifteen (15) state-working days after the Lessor has notified the State in writing, fails to comply either in performance or observance thereof, with any section of the Terms and Conditions, the RFLQ and/or the individual Lease.
- C. Any insolvency proceedings of any character, voluntary or involuntary, shall be instituted by or against the State.
- D. In the event any Leased Asset(s) are lost, stolen, taken by governmental action for a stated period extending beyond the term of any Lease Schedule, or destroyed/damaged beyond repair (excluding Force Majeure and Acts of God), the State shall promptly notify the Lessor and reimburse the Lessor an amount equal to the Casualty Value, as set forth in the Lease Schedule, for the Leased Asset(s) suffering the loss.

32. REMEDIES OF LESSOR

If an event of default shall have occurred, and provided the State is unable to remedy any breach within fifteen (15) state-working days after Lessor's written notice to the State thereof, the Lessor may to the extent permitted by law:

- A. Terminate the Lease and recover the present value of the remaining Lease payments owed hereunder, except as provided for under Sections 14, 22, 34 and 35, at current comparable term U.S. Treasuries plus 100 basis points.

- B. Enter any premises where Leased Asset(s) may be housed, subject to the State's reasonable security requirements at the site, and take possession of Leased Asset(s) or render it unusable, and retain all prior Lease payments as partial compensation for its use. Upon repossession or return of the Leased Asset(s), the Lessor will dispose of the Leased Asset(s) in a commercially responsible manner. Any net proceeds of the disposal will be applied to the amounts due under the Lease, but only after deducting; 1) in the case of sale, the estimated fair market sales value of such item as of the scheduled expiration of the Lease, and; 2) all reasonable and necessary expenses, including reasonable legal fees, incurred in connection therewith. Any excess net proceeds are to be retained by Lessor.
- C. Pursue any other remedy permitted by law or in equity. Waiver of any default shall not be a waiver of any other default. All of the Lessor's rights hereunder are cumulative and not alternative.

33. LESSOR'S COVENANTS

Any one or more of the following are events of default:

- A. Upon receiving a completed Participation Agreement from the State, the Lessor does not pay the Supplier, on behalf of the State, all costs relating to the Leased Asset(s), within the time specified by the Supplier on the invoice supplied to the Lessor and upon receipt of a delivery date for the Leased Asset(s) from the Supplier.
- B. The Lessor, for more than fifteen (15) state-working days after the State has notified the Lessor in writing, fails to comply either in performance or observance thereof, with any section of the Terms and Conditions, the RFLQ and/or the individual Lease.
- C. The Lessor disrupts the State's quiet enjoyment of the Leased Asset(s).

- D. The Lessor does not pay taxes when due.

34. REMEDIES OF STATE

If an event of default shall have occurred, and provided the Lessor is unable to remedy any breach within fifteen (15) state-working days after State's written notice to the Lessor thereof, the State may to the extent permitted by law:

- A. Terminate the Lease immediately on the 16th day of non-performance, and it shall then become the duty of the Lessor to reclaim and remove the Leased Asset(s) promptly at no expense to the State.
- B. In the event of the termination of the Lease, either in whole or in part, by reason of default or breach by the Lessor, any loss or damage sustained by the State in procuring or leasing any items which the Lessor agreed to supply shall be borne and paid for by the Lessor.
- C. In the event of the termination of the Lease, either in whole or in part, by reason of default or breach by the Lessor, the State may exercise its Purchase Option (Section 19) and apply 60% of the rendered Lease payments to the purchase of the Leased Asset(s) as listed by line item in the Purchase Order.
- D. The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Lessor or to make a claim against the Lessor therefore.
- E. Pursue any other remedy permitted by law or in equity. Waiver of any default shall not be a waiver of any other default. All of the State's rights hereunder are cumulative and not alternative.

35. LIQUIDATED DAMAGES

If any shipments of the Leased Asset(s) are delayed, and if the delay is directly caused by the Lessor and not the Supplier, this delay will interfere with the proper implementation of the State's programs

causing a loss and/or damage to the State, and the Lessor will be held responsible for liquidated damages. In the event of any such delay, the amount of damage which will be sustained from a delay will be the amount equal to 1/30th of the total monthly lease charges of the Leased Asset(s) per day, or \$100, whichever is greater, not to exceed 180 calendar days, or per any other Liquidated Damages amount/timeframe as denoted/negotiated by the State in the RFLQ prior to the award of the Lease. The State and Lessor agree that in the event of any such delay, the Lessor shall pay the above amounts as liquidated damages and not as a penalty, and those amounts due to the State may be deducted by the State from any money payable to the Lessor pursuant to this Lease. The State shall notify the Lessor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Lessor. The Lessor will reduce or hold the original lease rate during any delays caused by the Lessor and will not be allowed to raise rates regardless of the circumstances surrounding the delay. The Lessor will not be liable for damages or any act or omission of the Supplier.

36. LEASED ASSET(S) SELECTION LIABILITY

The State understands that neither the manufacturer nor the Supplier of the Leased Asset(s) is an agent of the Lessor, and that the Lessor warrants at the time the Leased Asset(s) are delivered to the State that it will have full right, power and authority to lease the Leased Asset(s) to the State. Except for the warranty referenced in the sentence directly preceding this one, the Lessor does not make any warranties, expressed or implied, including the warranty of merchantability or fitness of the Leased Asset(s) for any particular purpose. The State acknowledges that it is not relying on the Lessor's skill or judgment to select or furnish Leased Asset(s) suitable for any particular purpose. The Lessor shall not be liable for damages arising out of or in conjunction with the performance of the Leased Asset(s) or its use by the State.

37. CHANGES TO THESE TERMS AND CONDITIONS

These Terms and Conditions are complete and exclusive regarding each Lease transaction and supersedes any prior oral or written

communications between the parties. Delivery of an executed copy of all documents by facsimile with originals to follow if required by Lessor or any other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. No alteration or variation of these Terms and Conditions shall be valid unless made in writing and approved in the following order; 1) Lease \$Mart Administrator; 2) State, and; 3) Lessor. No oral understanding or agreement not incorporated herein shall be binding on any of the aforementioned parties in these Terms and Conditions.